

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ANTHONY BAILEY,

Case No. 2:12-CV-1954 JCM (CWH)

Plaintiff(s),

ORDER

V.

RICH SUEY, et al.,

Defendant(s).

Presently before the court is plaintiff Anthony Bailey's motion for an order scheduling trial. (ECF No. 188). Defendants have filed a response (ECF No. 191), and plaintiff has filed a reply (ECF No. 192).

Defendants argue that scheduling a trial date is inappropriate at this time because the Ninth Circuit memorandum in this case vacated this court's granting of summary judgment as to plaintiff's inadequate ventilation claim and remanded for further proceedings on that claim. *See* (ECF Nos. 178 (instructing that the trial court may receive additional evidence for possible summary judgment of this claim), 191).

Specifically, defendants suggest that additional briefing will allow them to show that plaintiff “failed to exhaust his administrative remedies before he filed his inadequate ventilation claim.” (ECF No. 191 at 3).

In reply, plaintiff asserts that he provided proof of exhaustion during the complaint-screening process and that the court acknowledged the same. (ECF No. 192). Plaintiff makes reference to his October 20, 2016, submission of exhibits suggesting the completion of inmate grievance forms. *See* (ECF Nos. 179, 192).

In turn, that submission argues that the court’s December 7, 2012, order “condoned” the relevant exhaustion efforts. (ECF No. 179 at 2). Upon review, that order did not consider exhaustion. *See* (ECF No. 14). Thus, the court will consider additional evidence as to plaintiff’s efforts to administratively exhaust his inadequate ventilation claim.

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff's motion for an order scheduling trial (ECF No. 188) be, and the same hereby is, DENIED.

IT IS FURTHER ORDERED that defendants shall file a supplemental motion for summary judgment—providing new evidence regarding exhaustion—within twenty-one (21) days of this order. Plaintiff shall then file a response within twenty-one (21) days of defendants' submission. Finally, defendants shall submit a reply within fourteen (14) days of plaintiff's response filing date.

DATED April 10, 2017.

James C. Mahan
UNITED STATES DISTRICT JUDGE